

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JARED J BAILEY,

CASE NO. 3:22-cv-05973-RJB

Plaintiff,

ORDER ON CITY DEFENDANTS'
MOTION TO DISMISS AND
PLAINTIFF'S MOTION FOR
JOINDER OF PARTIES

CITY OF OLYMPIA PROSECUTOR, et al.,

Defendants.

This matter comes before the Court on the Defendants City of Olympia Prosecutors R.

Tye Graham and Rosemary Hewitson and the City of Olympia Police Department's (collectively "City Defendants") Motion to Dismiss (Dkt. 25, refiled in redacted form at 32, referred to here as Dkt. 25) and Plaintiff's Amended Motion to Join Parties Thurston County Prosecutor, Jon Tunheim, and Thurston County Jail (Dkt. 38), which should be construed as a motion to amend the Plaintiff's Amended Complaint. The Court has considered the pleadings filed regarding the motions, including several of Plaintiff's late responses to the City Defendants' motion, and the file herein.

1 The Plaintiff filed this case, *pro se*, on December 15, 2022 and paid the filing fee. Dkt. 1.
2 After several deficiencies were identified in his Complaint, he was given an opportunity to file
3 an Amended Complaint, which he did. Dkts. 6 and 8. This case arises from the arrest and
4 prosecution of the Plaintiff. Dkt. 8. The Plaintiff has filed several frivolous pleadings in this
5 case. Many of his allegations are not plausible.

6 The Plaintiff's Amended Complaint's caption lists "Thurston County and City of
7 Olympia et al" as defendants, and later complains of actions alleged to have been taken by the
8 City of Olympia Police Department and "defendants." *Id.* Adding to the confusion, in one of his
9 responses to the City Defendants' motion, the Plaintiff states he is suing "City of Olympia Police
10 Department" and "City of Olympia Prosecutor Offices of Chief prosecutor R. Tye Graham [sic]
11 and Rosemary Hewittson [sic]," and that the "City of Olympia is not listed as any defendant."
12 Dkt. 40 at 3-4. For purposes of the pending motion to dismiss, the Court will construe all the
13 Plaintiff's pleadings liberally, and consider the claims as being asserted against the City of
14 Olympia, City of Olympia Prosecutor Offices, R. Tye Graham, and Rosemary Hewitson, who
15 shall collectively be referred to as the "City Defendants."

16 For the reasons provided below, the City Defendants' motion for the Court to take
17 judicial notice of pleadings filed in a criminal matter currently pending against the Plaintiff in
18 Thurston County, Washington Superior Court should be granted, their motion to consider certain
19 documents incorporated into the Amended Complaint by reference should be denied without
20 prejudice, and their motion for the dismissal of all claims asserted against them in this case
21 should be granted.

22 This opinion will first turn to the motion for judicial notice and incorporation by
23 reference, then address the motion to dismiss pursuant to Fed. R. Civ. P. ("Rule") 12(b)(6), and
24

1 lastly the Plaintiff's motion for leave to amend his Amended Complaint to add additional parties.
2 Although the City Defendants also assert other grounds for relief, including improper service of
3 process, there is no need to reach those issues because the claims against them should be
4 dismissed on other grounds.

5 **MOTION FOR JUDICIAL NOTICE AND INCORPORATION BY**
REFERENCE

6 Pursuant to Federal Rule of Evidence 201(b): “[t]he court may judicially notice a fact that
7 is not subject to reasonable dispute because it: (1) is generally known within the trial court’s
8 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
9 accuracy cannot be reasonably questioned.”

10 When evaluating the sufficiency of a pleading under Rule 12(b)(6), a court reviews only
11 the allegations in the complaint and any attachments or documents incorporated by reference.
12 *Koala v. Khosla*, 931 F.3d 887 894 (9th Cir. 2019). “Certain written instruments attached to
13 pleadings may be considered part of the pleading. Even if a document is not attached to a
14 complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively
15 to the document or the document forms the basis of the plaintiff’s claim.” *United States v.*
16 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

17 Although for purposes of a motion to amend or for a motion to dismiss the court
18 ordinarily credits the allegations in the complaint as true, it need not “accept as true allegations
19 that contradict matters properly subject to judicial notice . . . by exhibit” or incorporated by
20 reference into the complaint. *Gonzalez v. Planned Parenthood of Los Angeles*, 759 F.3d 1112,
21 (9th Cir. 2014); *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998)(the
22 court is “not required to accept as true conclusory allegations which are contradicted by
23 documents referred to in the complaint”).

The City Defendants move the Court to take judicial notice of the pleadings filed in the criminal matter, *State of Washington v. Jared Jason Bailey*, Thurston County, Washington Superior Court case number 22-1-01222-34. The motion (Dkt. 25) should be granted. Judicial notice should be taken of the Information (refiled in this case at Dkt. 26-1 at 18) and the “Harassment-No Contact Orders” (refiled in this case at Dkts. 26-2 at 2-5) (protecting Defendants here, Rosemary Hewitson and Tye Graham, from the Plaintiff here) filed in that criminal case. Judicial notice should also be taken of the public docket in that case.

The City Defendants also move the Court to incorporate into the Amended Complaint, by reference, the Reporting Officer Narratives, Incident Reports, and Case Supplemental Reports which purport to detail the victim reports, the City of Olympia Police Department's investigation, and the Plaintiff's arrest. (The Amended Complaint is the operative complaint rendering the Plaintiff's original complaint "without legal effect." *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012)).

The City Defendants' motion regarding incorporation of these pleadings (the Reporting Officer Narratives, Incident Reports, and Case Supplemental Reports) into the Amended Complaint (Dkt. 25) should be denied without prejudice. These pleadings are not necessary to decide the motion fairly.

I. FACTS

The following facts are taken from the Plaintiff's Amended Complaint, judicially noticed facts, and facts from pleadings incorporated by reference.

Like his initial complaint, the Plaintiff's Amended Complaint (Dkt. 8) is, in places, difficult to follow and many of the allegations are not plausible. Sometimes referring to himself as "Jared Bailey the Supreme Court," he cites to various constitutions, statutes, international

1 treaties, and other legal works. Dkt. 8. As is relevant here, in his Amended Complaint, he
 2 alleges that:

3 On December 8, 2022, the defendant(s) - under colour of law and without a
 4 warrant, or probable cause affidavit – did ambush, and assault, and kidnap, and
 5 torture, and criminally confine the Plaintiff. The defendant(s) confined the
 6 Plaintiff for approximately four (4) days and three (3) nights. While he was
 7 confined, the defendant(s) – without a warrant and without probable cause, and
 8 without affidavit – broke into the Plaintiff’s lawful residence and entered his
 9 home and business located at 1801 4th Ave E., Olympia, WA 98506 where they
 10 proceeded to take property belonging to Jared Bailey and his ministry. . .

11 Dkt. 8 at 1. The Plaintiff’s Amended Complaint further asserts that:

12 On December 9, 2022 A.D., at three o’clock thereabouts, the defendant(s)
 13 proceeded to file claims against the Plaintiff in the Superior and District Court(s)
 14 claiming that Jared Bailey is a member of a “black race” and whose
 15 Constitutional rights the court was not bound to respect. The Plaintiff lawfully
 16 Claims that his race is the Human Race . . . [he] is not a member of any “black
 17 race” . . . nor is there any document or record – previous to the now publicly
 18 recorded publication of the vicious lie FALSELY CLAIMING that Jared Bailey is
 19 a “black male” . . . [he] has maintained that it is a violation of his freedom of
 20 religious expression to be forced to submit to a race that is not his own is to be
 ALIENATED from Allah and to be self alienated from al a.

21 *Id.* at 1-2 (*emphasis in original*). He contends that as a result, he has been “publicly violated,”
 22 his “rights to suffrage,” and rights under the Constitution to “establish his and express his faith
 23 free from persecutions” have been violated. *Id.* He claims that the Defendants made these false
 24 claims on the public record. *Id.* at 2. The Plaintiff alleges in the Amended Complaint that the
 Defendants have committed treason against the United States and maintains that his
 “kidnapping” was a “failed attempt to traffic him into free prison labor for the State of
 Washington.” *Id.*

21 The Amended Complaint further alleges that the Defendants violated the Fourth and
 22 Fourteenth Amendments of the U.S. Constitution, Article II, Section III of the United States
 23 Constitution, the “Supremacy Clause” of the U.S. Constitution, federal criminal statutes - 18
 24

1 U.S.C. §§ 241 and 242, the Civil Rights Acts of 1866, 1870, and 1871, “the Enforcement Act I
 2 [sections II and III], the Enforcement Act II [sections V and VI],” and the “False Claims Act [31
 3 U.S.C. §§ 3729].” *Id.* at 3-5. He points to “Lafferty Sandy Hook v. Alex Jones.” *Id.* at 3. He
 4 also refers to treason and international treaties. *Id.* He claims billions of dollars in damages. *Id.*
 5 at 6.

6 The following facts come from the publicly available docket sheet from *State of Washington*
 7 *v. Jared Jason Bailey*, Thurston County, Washington Superior Court case number 22-1-01222-
 8 34: The docket in that case indicates that Plaintiff had a preliminary appearance in court on
 9 December 9, 2022 (the day after his arrest). An Information was filed on December 13, 2022.
 10 Various hearings, including his arraignment and on other motions have occurred. Trial by jury is
 11 set to begin on May 30, 2023.

12 The following facts come from the December 13, 2022 Information filed in the *State of*
 13 *Washington v. Jared Jason Bailey*, Thurston County, Washington Superior Court case number
 14 22-1-01222-34, filed in this case at Dkt. 26-1 at 18 (“Information”). In the Information, the
 15 Plaintiff is described as a “black/m/5’09”/240/Brown/Black.” *Id.* He was charged as follows:

16 COUNT 1: FELONY HARASSMENT . CRIMINAL JUSTICE PARTICIPANT.
 17 RCW 9A.46.020(1) and (2)(ft)(iii) - C FELONY: That the said defendant, Jared
 18 Jason Bailey, in the State of Washington, on or about December 8, 2022, without
 19 lawful authority, knowingly threatened to cause bodily injury immediately or in
 20 the future to the person threatened or to any other person; or to subject the person
 21 threatened or any other person to physical confinement or restraint and the person
 22 threatened was a criminal justice participant, to-wit: Raymond Tyrell Graham,
 23 and the defendant's words or conduct did place such criminal justice participant in
 24 fear that the threat would be carried out, and a reasonable criminal justice
 participant would have been in fear under all the circumstances that the threat
 would be carried out.

22 COUNT 2: FELONY HARASSMENT - CRIMINAL JUSTICE PARTICIPANT.
 23 RCW 9A.46.020(1) and (2)(b)(iii) - CLASS C FELONY: That the said defendant,
 24 Jared Jason Bailey, in the State of Washington, on or about December 8, 2022,
 without lawful authority, knowingly threatened to cause bodily injury

immediately or in the future to the person threatened or to any other person; or to subject the person threatened or any other person to physical confinement or restraint and the person threatened was a criminal justice participant, to-wit: Rosemany [sic] Hewitson, and the defendant's words or conduct did place such criminal justice participant in fear that the threat would be carried out, and a reasonable criminal justice participant would have been in fear under all the circumstances that the threat would be carried out.

Id. Note that the charging contents of court files are not considered for the truth of the facts alleged, but only for the truth of the procedure Plaintiff is facing.

The following facts come from the December 9, 2022 “Harassment – No Contact Order[s]” (“NCOs”) filed in the *State of Washington v. Jared Jason Bailey*, Thurston County, Washington Superior Court case number 22-1-01222-34, filed in this case at Dkt. 26-2 at 2-5: both NCOs prohibit the Plaintiff from having contact with Rosemary Hewitson and Tye Graham. *Id.* Both identify the Plaintiff as “gender – male” and “race – black.” *Id.*

II. DISCUSSION

A. STANDARD FOR MOTION TO DISMISS

Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55 (2007) (internal citations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true

1 (even if doubtful in fact).” *Id.* at 555. The complaint must allege “enough facts to state a claim
 2 to relief that is plausible on its face.” *Id.* at 547.

3 **B. CLAIMS BASED ON CERTAIN PROVISIONS OF THE U.S.
 4 CONSTITUTION, CRIMINAL STATUTES, FALSE CLAIMS ACT,
 5 “ENFORCEMENT ACT,” “FERA,” AND INTERNATIONAL TREATIES**

6 The exact nature of a majority of Plaintiff’s claims are unclear. The Plaintiff’s Amended
 7 Complaint refers to the Article II, Section III of the United States Constitution, the Supremacy
 8 Clause of the U.S. Constitution, criminal statutes, the federal False Claims Act, the
 9 “Enforcement Act,” and international treaties. Dkt. 8. His responses to the motion to dismiss
 also discuss “FERA.” *E.g.* Dkt. 42.

10 To the extent the Plaintiff asserts claims against any of the Defendants under these laws,
 11 they should be dismissed, for the reasons set out below.

12 Article II, Section III of the United States Constitution, relates to the duties of the
 13 President of the United States and is entitled “Recommendation to Congress – Convene and
 14 Adjourn Congress – Receive Ambassadors – Execute Laws – Commission Officers.” The
 15 Plaintiff fails to show that there is a private right of action under this provision of the
 16 Constitution that in any manner applies here. Further, the Plaintiff fails to allege any facts
 17 plausibly giving rise to a claim under the Supremacy Clause of the United States Constitution.

18 The Plaintiff’s claims for violation of federal and state criminal statutes should be
 19 dismissed. There is no private right of action under 18 U.S.C. §§ 241-242. *Allen v. Gold
 20 Country Casino*, 464 F.3d 1044 (9th Cir. 2006). Further, there generally is no private right of
 21 action in criminal statutes, *See Id.*, including for treason, and the Plaintiff makes no showing that
 22 there are any available to him here. His claims for violation of criminal statutes should be
 23 dismissed for failure to state a claim.

1 To the extent that the Plaintiff makes a claim for violation of the federal False Claims
 2 Act, 31 U.S.C. 3729, *et. seq.*, his claims should be dismissed. The False Claims Act requires
 3 that a “claim” be presented to an “officer, employee or agent of the United States” for payment
 4 or approval. 31 U.S.C. § 3729(a)(1)(A) and (b)(2). The Plaintiff fails to allege that a claim was
 5 so presented. His assertions that the various pleadings filed in his state criminal case, which
 6 identify him as “black,” and violate this statute, are frivolous. The lines in these pleadings
 7 identifying the Plaintiff as “black” are merely observations and not court findings.

8 The Plaintiff’s responses discuss “FERA.” *E.g.* Dkt. 42. To the extent the Plaintiff is
 9 asserting a claim under the Fraud Enforcement and Recovery Act of 2009, which amended the
 10 False Claims Act, *See U.S. ex rel. McGrath v. Microsemi Corp.*, 140 F.Supp.3d 885, 901, the
 11 Plaintiff fails to show how this Act plausibly applies to the events alleged to have occurred here.

12 To the extent that the Plaintiff asserts claims under the “Enforcement Act,” those claims
 13 should be dismissed. He fails to point to a statutory citation or authority in support of this claim
 14 and the Court finds none.

15 His claims under international treaties are also frivolous. “For any treaty to be
 16 susceptible to judicial enforcement it must both confer individual rights and be self-executing.”
 17 *Cornejo v. Cnty. of San Diego*, 504 F.3d 853, 856 (9th Cir. 2007). The Plaintiff has not
 18 demonstrated that the treaties to which he refers, like the “Treaty of Peace and Friendship
 19 Marrakesh 1786 A.D.,” either confer individual rights or are self-executing.

20 Each of these claims should be dismissed.

21 **C. CIVIL RIGHTS ACTS OF 1866, 1870, AND 1871**

22 To the extent that the Plaintiff asserts claims under the Civil Rights Act of 1866 and
 23 1870, the claim should be dismissed. The Plaintiff fails to explain the nature of the claim. The
 24

Court notes that 42 U.S.C. § 1981 has its roots in the Civil Rights Act of 1866, *Magassa v. Mayorkas*, 52 F.4th 1156, 1163 (9th Cir. 2022) and “prohibits racial discrimination in the making and enforcement of contracts,” *Magana v. N. Mariana Islands*, 107 F.3d 1436, 1446 (9th Cir. 1997). There are no allegations here that could plausibly make a claim under the Civil Rights Act of 1866 or 1870 or under 42 U.S.C. § 1981. To the extent the Plaintiff asserts that the pleadings filed in the criminal matter that indicated his race was black violated 42 U.S.C. § 1981, the claim is frivolous and without merit. These are merely observations and not discriminatory legal statements or findings.

The Plaintiff also points to the Civil Rights Act of 1871, which is now codified at 42 U.S.C. § 1983. *Monell v. Sept. of Social Services of City of New York*, 436 U.S. 658, 658 (1978). Section 1983 “merely provides a mechanism for enforcing individual rights secured elsewhere, i.e., rights independently secured by the Constitution and laws of the United States. One cannot go into court and claim a violation of § 1983—for § 1983 by itself does not protect anyone against anything.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 285 (2002).

To the extent the Plaintiff is asserting a stand-alone claim for violation of § 1983, the claim should be dismissed. To the extent he is asserting a substantive federal constitutional claim (like a Fourth Amendment claim) or statutory claim under § 1983, the claims will be addressed by substantive claim, below.

D. FOURTEENTH AMENDMENT CLAIM PURSUANT TO 42 U.S.C. § 1983

The nature of the Plaintiff’s Fourteenth Amendment claim against the City Defendants is unclear. The Plaintiff fails to meaningfully oppose the motion to dismiss this claim. Further, the motion to dismiss this claim has merit.

1 To the extent the claim is based on the alleged force used to arrest him, or to arrest him or
 2 search his home without probable cause, the claim should be dismissed. “[I]f a constitutional
 3 claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment,
 4 the claim must be analyzed under the standard appropriate to that specific provision, not under
 5 the rubric of substantive due process.” *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997).
 6 The Fourteenth Amendment claim should be dismissed. The events of which Plaintiff complains
 7 should be analyzed under the Fourth Amendment because it is the specific provision that applies.

8 **E. FOURTH AMENDMENT CLAIMS BASED ON PLAINTIFF’S ARREST
 PURSUANT TO 42 U.S.C. § 1983**

9 The Fourth Amendment to the U.S. Constitution prohibits unreasonable seizures.
 10 Whether an officer used excessive force under the Fourth Amendment involves an objective
 11 inquiry into whether an officer’s actions were reasonable considering the particular
 12 circumstances. *Graham v. Connor*, 490 U.S. 386, 394 (1989).

13 While the Plaintiff’s Amended Complaint alleges that the Plaintiff was assaulted and
 14 tortured when he was arrested, he fails to allege any facts in support of his contention. More
 15 importantly, in his response, the Plaintiff states that he was “handcuffed with his hands behind
 16 his back,” and a “fatal struggle **could** have ensued.” Dkt. 27 at 10 (*emphasis added*). He has
 17 failed to allege that what happened was excessive or that the “officer[s]” actions were not
 18 reasonable considering the particular circumstances.” *Graham*, at 394. His Fourth Amendment
 19 claim should be dismissed.

20 **F. FOURTH AMENDMENT CLAIMS BASED ON PLAINTIFF’S ARREST AND
 THE ALLEGED SEARCH OF THE PLAINTIFF’S HOME WITHOUT
 PROBABLE CAUSE PURSUANT TO 42 U.S.C. § 1983**

21 Absent exceptional circumstances, federal courts should not enjoin pending state criminal
 22 proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). A federal court should abstain from

1 exercising jurisdiction over a case under *Younger* when: “(1) there is an ongoing state judicial
 2 proceeding; (2) the proceeding implicates important state interests; (3) there is an adequate
 3 opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief
 4 seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding.”
 5 *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018)(internal quotation marks and citations
 6 omitted). Where all the *Younger* abstention elements are met, a district court must abstain from
 7 hearing the case and dismiss the action. *Beltran v. State of Cal.*, 871 F.2d 777, 782 (9th Cir.
 8 1988).

9 The Defendants’ motion to dismiss should be granted and the Plaintiff’s Fourth
 10 Amendment claims based on his assertion that he was arrested and his home was searched
 11 without probable cause should be dismissed without prejudice. All the *Younger* abstention
 12 elements are met. There is an ongoing criminal proceeding against the Plaintiff and the criminal
 13 proceeding implicates important state interests- that of the state enforcing its’ criminal statutes.
 14 There is no showing that the Plaintiff cannot raise these constitutional issues during the state
 15 court proceedings. Further, the Plaintiff’s requested relief (which would necessitate rulings on
 16 whether his constitutional rights under the Fourth Amendment for a search and seizure without
 17 probable cause have been violated) would have the “practical effect of enjoin[ing] the ongoing
 18 state criminal proceedings.” *Mann v. Jett*, 781 F.2d 1488 (9th Cir. 1986). Rulings on these
 19 issues would have a substantial disruptive effect on the state court criminal proceedings against
 20 the Plaintiff.

21 **G. CLAIMS UNDER WASHINGTON LAW**

22 The Plaintiff refers to the Washington State Constitution. There is no private right of
 23 action under the Washington State Constitution. *Blinka v. Wash. State Bar Ass ’n*, 109 Wash.
 24

1 App. 575, 590-591 (2001). To the extent the Plaintiff makes claims under the Washington State
2 Constitution, they should be dismissed.

3 As was the case in prior pleadings, in his responses to this motion, the Plaintiff repeatedly
4 references “malicious prosecution” but fails to point to any facts supporting this claim against
5 any of the City Defendants. To the extent he is attempting to assert this claim, it should be
6 dismissed for failure to state a claim.

7 **H. LEAVE TO AMEND AS TO THE CITY DEFENDANTS**

8 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is
9 entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal
10 of the action. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.1995).

11 As stated above in Section F., pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), the
12 Fourth Amendment claims based on lack of probable cause should be dismissed without
13 prejudice and without leave to amend. The remaining claims asserted against the City
14 Defendants should be dismissed with prejudice for failure to state a claim. This dismissal should
15 be without leave to amend. The Plaintiff has been notified of deficiencies in his Complaint. His
16 Amended Complaint suffers from the same sort of deficiencies. At this stage, it is clear that
17 amendment is futile as to the City Defendants and the Plaintiff should not be given leave to
18 amend yet again.

19 **I. PLAINTIFF’S MOTION TO AMEND**

20 The Plaintiff moves to add Thurston County Prosecutor Jon Tunheim and the Thurston
21 County Jail as defendants. Dkt. 38. This motion should be construed as a motion for leave to
22 amend Plaintiff’s Amended Complaint under Fed. R. Civ. P. 15.

Under Fed. R. Civ. P. 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” A motion to amend under Rule 15(a)(2), “generally shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the opposing party.” *Chudacoff v. University Medical Center of Southern Nevada*, 649 F.3d 1143, 1152 (9th Cir. 2011).

The Plaintiff’s motion to amend his Amended Complaint to add Jon Tunheim, the elected prosecuting attorney for Thurston County, Washington and the Thurston County, Washington jail, (Dkt. 38) should be denied. There are no allegations in the Amended Complaint that in any manner relate to Mr. Tunheim except that his office is prosecuting the Plaintiff for felony harassment of two City of Olympia prosecutors. The Plaintiff’s proposed amendment to add Mr. Tunheim as a defendant is taken in bad faith and appears to be an effort to harass him. Additionally, there are no allegations in the Amended Complaint that support a claim against the Thurston County, Washington jail. His motion to add either of these parties should be denied.

J. CONCLUSION AND ORDER TO SHOW CAUSE

Almost all of the Plaintiff’s claims are wholly unclear. Many of his allegations are not plausible. Considering all plausible allegations in the Amended Complaint, the Amended Complaint fails to state a claim on which relief can be granted under Rule 12(b)(6). To the extent the Plaintiff makes claims for violation of his Fourth Amendment rights against searches and seizures without probable cause, his claims should be dismissed without prejudice and without leave to amend pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). His remaining claims against the City Defendants should be dismissed for failure to state a claim and without leave to amend.

Aside from the frivolous claims asserted around the documents identifying the Plaintiff as “black,” filed by the Thurston County Prosecutor’s Office and repeated by the superior court judge, there are no additional allegations in the Amended Complaint that plausibly relate to Thurston County or any of its employees.

By **May 19, 2023**, the Plaintiff should be ordered to show cause, in writing, if any he has, why the claims, if any, against Thurston County, Washington should not be dismissed. Failure to respond may result in dismissal of those claims.

III. ORDER

Therefore, it is hereby **ORDERED** that:

- The City Defendants' motion for the Court to take judicial notice of pleadings filed in a criminal matter currently pending against the Plaintiff in Thurston County, Washington Superior Court (Dkt. 25) **IS GRANTED**;
 - The City Defendants' motion to consider certain documents incorporated into the Amended Complaint by reference (Dkt. 25) **IS DENIED WITHOUT PREJUDICE**;
 - The City Defendant's motion for the dismissal of all claims asserted against them in this case (Dkt. 25) **IS GRANTED**;
 - The Plaintiff's Amended Motion for Joinder, construed as a motion for leave to file an amended complaint (Dkt. 38) **IS DENIED**; and
 - By **May 19, 2023**, the Plaintiff **IS ORDERED TO SHOW CAUSE**, in writing, if any he has, why the claims against Thurston County, Washington should not be dismissed.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 8th day of May, 2023.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge